

# EXHIBIT D

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## MEMORANDUM OF LEASE

Register of Deeds  
Buncombe County, N. C.

THIS INDENTURE made the ~~23<sup>rd</sup>~~<sup>1976</sup> day of December 1975 ~~at New York~~<sup>1976 JAN 13 AM 9:47n</sup>  
ASHEVILLE K-M ASSOCIATES, a North Carolina limited partnership,  
having an office c/o Paul Green, Esq., 501 Madison Avenue, New  
York, New York 10022, hereinafter referred to as "Landlord"  
and NINETEENTH ASHEVILLE CORP., having an office at 1133 Avenue  
of the Americas, 19th floor, New York, New York 10036, herein-  
after referred to as "Tenant".

W I T N E S S E T H:

Landlord hereby demises and leases to Tenant, and Tenant  
hereby hires and takes from Landlord the following described  
premises.

All that certain plot of land with the buildings  
thereon situate lying and being in the County of  
Buncombe, State of North Carolina, bounded and de-  
scribed as more particularly set forth in Exhibit  
A, attached hereto and hereby made a part hereof.

Together with all right, title and interest of the Land-  
lord, if any, in and to any land lying in the bed of any  
street in front of said premises to the center line thereof.

Together with all attachments, fittings, electric wiring,  
plumbing, and all other improvements and appurtenances belonging  
to Landlord which are affixed to the building and inseparable  
therefrom without substantial damage to the demised premises.

All the property above described and buildings thereon,  
or referred to, together with all replacements, additions, improve-  
ments, and betterments of said property belonging to Landlord,  
are hereinafter collectively referred to as "demised premises".

Together with the leases thereof and the rent and additional  
rent due or to become due thereunder and all of the Landlord's  
rights, title and interest therein and thereto, and Landlord

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shall execute and deliver in recordable form, assignments, without recourse, of the foregoing leases, as to which leases the Tenant hereby undertakes, agrees and assumes to perform each and every term, covenant and condition thereof on the part of the Landlord to be performed.

Subject, however, to the items set forth on Exhibit B annexed hereto and made a part hereof.

TO HAVE AND TO HOLD the demised premises from the date hereof unless sooner terminated as herein provided and for such additional terms as to which the Tenant shall exercise its option and right of renewal.

The Tenant is hereby given and granted the irrevocable and absolute right to renew and extend this lease for <sup>23</sup> 3 successive renewal terms of ~~five~~ (5) years each. If the S.S. Kresge Company lease or any other sublease of the entire demised premises is extended by any means beyond the second renewal period of this lease and if the Tenant shall have theretofore exercised its option to renewal of the second renewal term, then the Tenant shall have a further option to renew and extend this lease for an additional term of five (5) years commencing upon the expiration of the second renewal term. Each of said renewal terms shall be on the same terms and conditions and the option and right shall be exercised by the Tenant by written notice to the Landlord no less than four (4) months prior to the expiration of the initial term and thereafter no less than four (4) months before the expiration of each renewal term. Unless otherwise required by the text of a provision of this lease, the word "term" shall mean the aggregate of the initial term and all renewal terms for which

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the Tenant shall extend this lease. The initial term and the renewal terms shall each terminate as of the last day of the last month thereof and rent shall be payable in advance on the first day of each month.

In the event that at final termination of this lease, either by the expiration of the initial or renewal term without the exercise by the tenant of its option to renew or upon the expiration of the final renewal term and upon such termination, any subtenant shall not have paid its net percentage rent (as defined in Article 2(c) of the Lease) for its immediately preceding lease year, which is the annual period on which the computation of the net percentage rent is based, and for the period of the then current lease year during which the termination of this lease shall occur, then and in that event the Landlord shall, upon receipt of the percentage rent, for the immediately preceding lease year, deduct therefrom 50% and pay the balance of the net percentage rent to the Tenant and upon receipt of the net percentage rent for the then current lease year apportion the same between the Landlord and the Tenant by applying a fraction which shall consist of the number of days of the current lease year of the subtenant included to the date of termination of this Lease and the denominator is 360 and deduct from the resulting amount 50% and pay the balance forthwith to the Tenant, provided that Tenant is not in default under the terms of this Lease and Landlord has given notice, if required.

The rent and terms and conditions of this lease are more particularly set forth in that certain Lease dated December 1975 by and between Landlord and the Tenant all of which are hereby incorporated herein and made a part hereof as though

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more fully set forth at length. Said lease includes reciprocal rights of first refusal between the Landlord and the Tenant.

WITNESS The hands and seals of the parties this 23<sup>rd</sup> day of December, 1975.

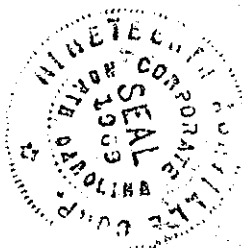
✓ 12-1-1  
ASHEVILLE K-M ASSOCIATES, Landlord

By [Signature]  
Paul Green, General Partner

✓ 12-2-1  
NINETEENTH ASHEVILLE CORP.

By [Signature]  
Harold W. Schulkind, Vice Pres.

By [Signature]  
Robert Goldberg, Secretary



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STATE OF NEW YORK )  
 ) SS.  
COUNTY OF NEW YORK )

BE IT REMEMBERED, That on this 23<sup>rd</sup> day of December, 1975,  
before me the subscriber, a Notary Public in and for said county,  
personally came the above named NINETEENTH ASHEVILLE CORP., the  
Tenant, in the foregoing Memorandum of Lease, by Harold W. Schulkind,  
a Vice President, and Robert Goldberg, Secretary, of said corpora-  
tion, who acknowledged the signing of the same to be their voluntary  
act and deed for and as the act and deed of said Corporation, for  
the uses and purposes therein mentioned.

*Julie Blanke*  
JULIE BLANKE  
Notary Public, State of New York  
No. 41-0313060  
Qualified in Queens County  
Commission Expires March 30, 1977

STATE OF NEW YORK )  
 ) SS.  
COUNTY OF NEW YORK )

BE IT REMEMBERED, That on this 23<sup>rd</sup> day of December, 1975,  
before me the subscriber, a Notary Public in and for said county,  
personally came the above named ASHEVILLE K-M ASSOCIATES, the  
Tenant, in the foregoing Memorandum of Lease, by Paul Green,  
a general partner, who acknowledged the signing of the same to  
be his voluntary act and deed for and as the act and deed of  
said partnership, for the uses and purposes therein mentioned.

*Julie Blanke*  
JULIE BLANKE  
Notary Public, State of New York  
No. 41-0313060  
Qualified in Queens County  
Commission Expires March 30, 1977

Re  
Registered January 23, 1976 at 3:14 pm  
William E. Digges  
Register of Deeds, Buncombe County  
By: *Maureen L. Parkman* *asst*

State of North Carolina, County of Buncombe

Each of the foregoing certificates, namely of *Julie Blanke*

a notary or Notaries public of the State and County designated is certified to be correct.

This 13 day of January, 1976

WILLIAM E. DIGGES  
Register of Deeds, Buncombe County

By: *Maureen L. Parkman* *asst* Deputy

Filed for registration on the 13 day of January, 1976 at 9:41 A.M.

WILLIAM E. DIGGES  
Register of Deeds, Buncombe County

By: *Maureen L. Parkman* *asst* Deputy

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All that certain plot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the City of Asheville, County of Buncombe, North Carolina:

TRACT ONE: BEGINNING at a concrete monument in the northern margin of the right of way line of dual U.S. Highways #19-23, known as Patton Avenue, at the southeast corner of the lands of Wachovia Bank and Trust Company and running thence with the line of said Bank, N 12-52 W 227 feet to a concrete monument; thence S 89-45 W 119.3 feet to a concrete monument in the right of way line of Louisiana Avenue; thence N 36-57 W 221.5 feet to an iron in the eastern margin of Louisiana Avenue; thence with the eastern margin of Louisiana Avenue N 28-51 W 63.5 feet to an iron pipe; the Joyner corner; thence with Joyner S 81-17 E 234.57 feet to an iron pipe; thence still with Joyner N 3-7 E 161.69 feet to a concrete monument, the Joyner northeast corner; thence with Joyner N 78-27 W 353.92 feet to an iron in the eastern margin of Louisiana Avenue; thence with the eastern margin of Louisiana Avenue N 19-26 W 87.85 feet; thence still with said Avenue N 5-22 W 100 feet; thence S 86-10-30 E 114.09 feet to an iron pipe; thence N 7-20 E 52.86 feet, corner with Hargus; thence with Hargus S 76-10-30 E 124.63 feet; thence N 7-34-30 E 93.99 feet; thence N 5-50 E 181.17 feet; thence S 70-45 E 312 feet to an iron; thence N 37-24 E 148.93 feet to an iron; thence S 70-11 E 573.02 feet to an iron in Hawkins Lane; thence with Hawkins Lane S 27-56 W 386.4 feet to a concrete monument; thence N 82-15 W 113.79 feet to an iron; thence S 32-53-30 W 193.5 feet to a concrete monument; thence S 23-27 W 165.86 feet to a concrete monument; thence S 85-57-30 E 17.59 feet to a dogwood tree; thence S 20-50-30 E 290.35 feet to an existing spike in the northern margin of Patton Avenue; thence with the northern margin of Patton Avenue S 85-26-30 W 350.45 feet to a concrete monument; thence still with the northern margin of Patton Avenue S 87-34 W 25 feet to the point of Beginning. Subject, however, to right of way for the widening of Hawkins Lane and the right of way for the widening of Louisiana Avenue.

TRACT TWO: BEGINNING at an iron pipe in the eastern margin of Louisiana Avenue, Wells' northwest corner, and running thence with the Wells' line, S 81-17 E 234.57 feet to an iron in the line of the land of G-E, Inc.; thence with said line N 3-7 E 161.69 feet to a monument at a 24 inch pin, corner with Shelton; thence with the Shelton line N 78-27 W 353.92 feet to an iron pipe in the eastern margin of Louisiana Avenue; thence with the eastern margin of Louisiana Avenue S 19-26 E 12.15 feet and S 28-51 E 211.64 feet to the point of Beginning.

EXHIBIT "A"

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Deed of Trust held by John F. Shuford as Trustee for  
the Penn Mutual Life Insurance Company dated January 27, 1966  
in the original amount of \$1,275,000.00 recorded in Deed of  
Trust Book 697 page 91 Buncombe County Registry.

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~~XXXXXXXXXXXX~~

Lease dated December 18, 1964 from Patton Avenue Development  
Corporation to S. S. Kresge (memorandum of lease recorded  
in Book 918, page 279).

Lease dated May 6, 1966 from Patton Plaza Associates to  
Bancroft Realty Company (Eckerd's Drugs, Inc.)

Lease dated June 11, 1972 from Nineteenth Asheville Corp. to  
Piece Goods Shops, Inc. of North Carolina.

Lease dated February 12, 1974 from Nineteenth Asheville Corp.  
to Blazer Financial Services, Inc.

Taxes subsequent to those for the year 1975.

Rights of parties in possession, encroachments, overlaps,  
overhangs, unrecorded easements, deficiency in quantity  
of ground, or any matters not of record, which would be  
disclosed by an accurate survey and inspection of the  
premises.

Easements to Southern Bell Telephone and Telegraph Company  
of record in Book 559, Page 460; Deed Book 667, Page 517;  
Deed Book 670, Page 50; Deed Book 708, Page 382; Carolina  
Power and Light Company, Deed Book 621, Page 135.

Easement to Wachovia Bank and Trust Company as set forth  
in Deed Book 894, Page 457, Buncombe County Registry,  
affecting Tract One.

Terms, covenants and conditions of that certain lease and  
amendments thereto from Edison C. Joyner and wife, Dovie  
R. Joyner, to Patton Avenue Development Corporation, dated  
October 1, 1964, and recorded in Deed Book 911, Page 402,  
and as amended by Lease Amendments dated March 18, 1965,  
recorded in Deed Book 918, Page 285; dated May 21, 1965,  
recorded in Deed Book 929, Page 193; and dated August 14,  
1965, recorded in Deed Book 929, Page 275, Buncombe County  
Registry, affecting Tract Two.

Rights of others in and to the use of drainage easements  
and roadway easements as contained in Book 1085, Page 359.

Restrictions appearing of record in Book 1085, Page 359.

Title to that portion of the property within the bounds  
of Hawkins Lane and Louisiana Avenue.

EXHIBIT "B"